

FEDERAL COURT OF AUSTRALIA

Judge: Lee J Date:

Lehrmann v Network Ten

File No. NSD103/2023

EXHIBIT/MFI:

59

Description:

Return to:

(party/non-party, if produced on subpoena)

Associate:

**HWL
EBSWORTH**

LAWYERS

Deed of settlement and release

Without prejudice until executed

**Commonwealth of Australia (as represented by the
Department of Finance)**

and

Brittany Higgins

Ref 1106172

Doc ID 1020278333/v1

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Deed of settlement and release

Date	13 December 2022
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Parties	<p>Commonwealth of Australia (as represented by the Department of Finance) ABN 61 970 632 485 of One Canberra Avenue, FORREST, ACT, 2603 (Commonwealth)</p> <hr/> <p>Brittany Mae Higgins C/- Blumers Personal Injury Lawyers, 12/15 London Circuit, CANBERRA, ACT, 2601 (Ms Higgins)</p>
<hr/>	
Recitals	<p>A. Ms Higgins was employed by the Commonwealth under the <i>Members of Parliament (Staff) Act 1984 (Cth) (MOPS Act)</i> between 22 October 2018 and 12 February 2021 (Employment). Relevantly, she was employed by the following relevant office-holders:</p> <ul style="list-style-type: none"> (a) between 22 October 2018 and 3 March 2019, to work for the Hon Steven Ciobo MP; (b) between 4 March 2019 and 5 June 2019, to work for Senator the Hon Linda Reynolds; and (c) between 6 June 2019 and 12 February 2021, to work for Senator the Hon Michaelia Cash. <p>B. On 29 January 2021, Ms Higgins notified Senator Cash's office of her intention to resign. Ms Higgins' resignation took effect following a period of annual leave from 29 January 2021 to 12 February 2021 (Termination).</p> <p>C. Ms Higgins alleges that on 22 March 2019, she was sexually assaulted by Mr Bruce Lehrmann (Alleged Sexual Assault). At this time, Mr Lehrmann was also employed by the Commonwealth under the MOPS Act to work for Senator Reynolds.</p>

D. On 21 December 2021, Ms Higgins provided correspondence to the Commonwealth, Senator Cash, Senator Reynolds, the Secretary of Finance and the Secretary of the Attorney-General's Department which identified the following potential legal claims which may be available to her against the Commonwealth, Mr Lehrmann, Senator Reynolds, Senator Cash, the Commonwealth of Australia and the Liberal Party of Australia in relation to the Alleged Sexual Assault and the events which followed:

- (a) contraventions of the *Sex Discrimination Act 1984* (Cth) (**SDA**);
- (b) contraventions of the *Fair Work Act 2009* (Cth) (**FW Act**);
- (c) contraventions of the *Privacy Act 1988* (Cth);
- (d) contraventions of the *Work Health and Safety Act 2011* (Cth);
- (e) a claim under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**SRC Act**); and
- (f) common law claims in negligence

(First Letter).

E. On 16 February 2022, Ms Higgins provided the Commonwealth with a document titled 'Draft Statement of Particulars' which alleged the Commonwealth of Australia, the Hon Scott Morrison MP, Senator Reynolds and Senator Cash were liable for the following potential legal claims in relation to the Alleged Sexual Assault and the events which followed:

- (a) contraventions of the SDA; and/or
- (b) contraventions of the FW Act

(Draft Particulars).

F. On 3 March 2022, Ms Higgins provided the Commonwealth with a document titled 'Particulars of Liability' in relation to the Alleged Sexual Assault and the events which followed. That document:

- (a) made claims against the Commonwealth including:

-
- (i) contraventions of the SDA, including:
 - (A) sexual harassment pursuant to ss 28B and 106;
 - (B) sex discrimination pursuant to s 14(2) and 106; and
 - (C) victimisation within the meaning of s 47A; and
 - (ii) contravention of the *Disability Discrimination Act 1992* (Cth) (**DDA**), including disability discrimination pursuant to s 15(2);
- (b) made claims against Senator Reynolds and Senator Cash including:
- (i) contraventions of the SDA, including:
 - (A) sex discrimination pursuant to s 14(2); and
 - (B) victimisation within the meaning of s 47A;
 - (ii) contravention of the DDA, including disability discrimination pursuant to s 15(2); and
 - (iii) common law claims in negligence; and
- (c) made claims against members of Senator Reynolds' staff (including Ms Fiona Brown) and Senator Cash's staff (including Mr Daniel Try and Ms Regina Camera), who are employees of the Commonwealth under the MOPS Act, including victimisation within the meaning of s 47A of the SDA

(Draft Particulars of Liability).

- G. On 7 December 2022, Ms Higgins provided the Commonwealth with a document titled 'Draft Complaint to the Australian Human Rights Commission' in relation to the Alleged Sexual Assault and the events which followed. That document:
- (a) made claims against the Commonwealth including:
 - (i) sexual harassment in contravention of ss 28B(2) and/or 28B(6) and s 106 of the SDA;

-
- (ii) sex discrimination in contravention of s 14(2) of the SDA;
 - (iii) disability discrimination in contravention of s 15(2) of the DDA; and
 - (iv) in respect of alleged acts of victimisation taken by Senator Reynolds, Senator Cash and their staff in contravention of s 47A of the SDA;
- (b) made claims against Senator Reynolds and Senator Cash including:
- (i) sexual harassment in contravention of s 14(2) and 47A of the SDA;
 - (ii) disability discrimination in contraventions of s 15(2) of the DDA; and
 - (iii) victimisation within the meaning of s 47A of the SDA;
- (c) made claims against members of Senator Reynolds' staff (including Ms Brown) and Senator Cash's staff (including Mr Try and Ms Camera) for victimisation within the meaning of s 47A of the SDA; and
- (d) made claims against certain employees and agents of the Commonwealth (including security guards and cleaners) including for:
- (i) contraventions of the SDA, including sex discrimination pursuant to s 14(2); and
 - (ii) contraventions of the DDA, including disability discrimination pursuant to s 15(2)

(Draft AHRC Complaint).

- H. The First Letter, Draft Particulars, Draft Particulars of Liability and Draft AHRC Complaint taken together constitute Ms Higgins' potential legal claims against the Commonwealth, Senator Reynolds, Senator Cash and members of Senator Reynolds' and Senator Cash's staff (**Potential Legal Claims**). The Potential Legal Claims are annexed to, and form part of, this deed.
- I. On 13 December 2022, the Commonwealth and Ms Higgins participated in a mediation to attempt to resolve the Potential Legal Claims (**Mediation**).

- J. Without any admissions of liability, the parties have agreed to resolve all Claims by Ms Higgins against the Beneficiaries relating in any way to the Circumstances on the terms set out in this deed and note that Ms Higgins does not intend to make a claim for compensation under the SRC Act.

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed the parties agree as follows:

1. Definitions and interpretation clauses

1.1 Definitions

In this deed:

Agreed Statement means the following statement:

"At a mediation held on 13 December 2022, the Commonwealth and Ms Higgins settled her claims. At the request of Ms Higgins, the parties have agreed that the terms of the settlement are confidential."

Alleged Sexual Assault has the meaning specified at Recital C

Beneficiaries means:

- (a) the Commonwealth of Australia and its current and former officers, employees, contractors and agents, but not including Mr Lehrmann;
- (b) Senator Reynolds; and
- (c) Senator Cash

For the avoidance of doubt, Beneficiaries does not include any other current or former Senator or Member of the House of Representatives.

Business Days means a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory.

Circumstances means the matters referred to in the Recitals, including:

- (a) the Employment;
- (b) the Termination;
- (c) the Alleged Sexual Assault; and

- (d) the Potential Legal Claims except for claims relating to:
- (i) the "lying cow" allegation referred to at paragraph 5.14 of the AHRC Complaint;
 - (ii) the Courtroom Conduct allegation referred to at Part 6 of the AHRC Complaint; and
 - (iii) the leaking of Without Prejudice Information referred to at Part 7 of the AHRC Complaint;

Claims

means any past, existing or future claim, action, proceeding, suit, demand, complaint, prosecution, judgment, award, demand, loss, cost, expense, liability or any legal, administrative, governmental, arbitral or other proceeding or investigation, and to the extent permitted by law, fine or penalty (whether presently ascertained, future or contingent) but does not include any claim for which it is not possible to provide a release, such as:

- (a) workers' compensation, including any claim under the SRC Act; or
- (b) superannuation

Comcare

means the body established under section 68 of the SRC Act

DDA

means the *Disability Discrimination Act 1992* (Cth)

Draft AHRC Complaint

has the meaning specified at Recital G

Draft Particulars

has the meaning specified at Recital E

Employment

has the meaning specified at Recital A

First Letter

has the meaning specified at Recital D

FW Act

means the *Fair Work Act 2009* (Cth).

HOSC Act

means the *Health and Other Services (Compensation) Act 1995* (Cth)

Mediation

means the mediation held on 13 December 2022 between the Commonwealth and Ms Higgins in relation to the Potential Legal Claims

MOPS Act

means the *Members of Parliament (Staff) Act 1984* (Cth)

Draft Particulars of Liability

has the meaning specified at Recital F

Personal Information	has the same meaning as in the <i>Privacy Act 1988</i> (Cth)
Potential Legal Claims	has the meaning specified at Recital H
SDA	means the <i>Sex Discrimination Act 1984</i> (Cth)
Settlement Sum	means the total of the amounts specified at clause 2.1
SRC Act	means the <i>Safety, Rehabilitation and Compensation Act 1988</i> (Cth).
SS Act	means the <i>Social Security Act 1991</i> (Cth)
Statutory Causes of Action	means the statutory causes of action potentially available to Ms Higgins under the <i>Australian Human Rights Commission Act 1986</i> (Cth), the SDA, and the DDA
Termination	has the meaning specified at Recital B

1.2 Interpretation

In this deed, unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect interpretation;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any government agency (whether or not having a separate legal personality);
- (f) a reference to a party includes that party's successors and permitted assigns;
- (g) a provision of this deed may not be construed adversely to a party solely on the ground that the party (or that party's representative) was responsible for the preparation of this deed or the preparation or proposal of that provision;
- (h) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable;
- (i) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day; and

- (j) a reference to '\$' is a reference to the lawful currency of the Commonwealth of Australia.

2. Settlement

2.1 Settlement Sum

2.1.1 Subject to Ms Higgins' satisfaction of clause 2.3, the Commonwealth must pay to, or on behalf of, Ms Higgins as compensation in respect of the Statutory Causes of Action:


- (a) \$400,000 for hurt, distress and humiliation suffered by Ms Higgins arising from alleged conduct occurring:
- (i) during the Employment;
 - (ii) prior to the Termination; and
 - (iii) in no way connected to the Termination;
- (b) \$1,480,000 as a capital payment paid to Ms Higgins in respect of Ms Higgins' loss of earning capacity;
- (c) \$220,000 as reimbursement for medical and like expenses incurred by Ms Higgins arising from the Alleged Sexual Assault and the events which followed;
- (d) \$100,000 for past and future domestic assistance; and
- (e) \$245,000 as reimbursement of Ms Higgins' legal costs and disbursements (**Legal Costs**).

2.1.2 For the avoidance of doubt, no part of the Settlement Sum is in respect of any damages arising out of or in respect of any common law claim.

2.2 Payment of Settlement Sum

The Commonwealth must pay the Settlement Sum, less any deductions permitted by this deed, by electronic funds transfer into the trust account of Blumers Personal Injury Lawyers as follows:

Bank: Macquarie Bank Limited

Name:  Blumers Lawyers Canberra Pty Limited Trust Account

2.3 Pre-compliance documentation

Ms Higgins must provide, or facilitate the provision of, the following documentation to the Commonwealth:

- (a) invoices in respect of the Legal Costs; and
- (b) all relevant notices from Medicare, pursuant to the HOSC Act, permitting the payment of the Settlement Sum to Ms Higgins without giving rise to a liability for the Commonwealth under that Act; and
- (c) all relevant notices, if any, from Centrelink, pursuant to the SS Act, as to whether any amount is repayable from the Settlement Sum under that Act; and
- (d) a report from a qualified treating medical practitioner that Ms Higgins has legal capacity to enter into this deed; and
- (e) a copy of this deed properly executed by Ms Higgins.

2.4 Time for Compliance

The Commonwealth will comply with its obligations under clause 2.2 within 15 Business Days of the Commonwealth receiving all of the documentation set out at clause 2.3.

3. Deductions

3.1 Ms Higgins acknowledges that the Commonwealth may withhold from the Settlement Sum, and pay to the relevant authority, amounts:

- (a) in respect of taxation;
- (b) that must be remitted to Medicare pursuant to the HOSC Act; and / or
- (c) that must be remitted to Centrelink pursuant to the SS Act.

3.2 The Commonwealth makes no warranty that the taxation withheld from the Settlement Sum represents the full extent of Ms Higgin's liability to pay taxation on the Settlement Sum.

4. Releases etc

4.1 Ms Higgins releases the Beneficiaries, except for Senator Reynolds and Senator Cash, from all Claims relating in any way to the Circumstances (**Higgins First Release**).

- 4.2 Ms Higgins releases Senator Reynolds and Senator Cash from all Claims relating in any way to the Circumstances except for:
- (a) any actions of Senator Reynolds or Senator Cash that do not relate to the performance or non-performance of their ministerial duties; or
 - (b) fines or penalties.
- (Higgins Second Release).**
- 4.3 Ms Higgins indemnifies Senator Cash and Senator Reynolds from any Claims made by Comcare:
- (a) to which sections 50 and 51 of the SRC Act apply; and
 - (b) relating in any way to the Circumstances.
- 4.4 The Commonwealth releases Ms Higgins from all Claims relating in any way to the Circumstances.
- 4.5 The Higgins First Release and the Higgins Second Release has effect as a deed poll given by Ms Higgins in favour of the Beneficiaries.

5. Bar to Proceedings

- 5.1 This deed may be pleaded by either party, or the Beneficiaries, as a bar to any Claims relating in any way to the Circumstances.
- 5.2 Ms Higgins acknowledges that Beneficiaries (who are not party to this deed, but who are released pursuant to clause 4.1) will be entitled to rely on this deed as a complete bar to any Claims relating in any way to the Circumstances.

6. Confidentiality

- 6.1 Subject to clause 6.2, the parties agree that they will not disclose the terms of this deed to any other person save for:
- (a) the Agreed Statement;
 - (b) the fact that the parties welcome the fact of settlement (after the Agreed Statement has been made public);
 - (c) the Commonwealth may inform the Beneficiaries about:
 - (i) the release contained in clauses 4.1, 4.2, 4.3 and 4.5; and
 - (ii) the bar to proceedings contained in clauses 5.1 and 5.2;
- including definitions relevant to those clauses.

- 6.2 A party may disclose the terms of this deed:
- (a) if required by law;
 - (b) to a professional adviser, financial adviser, legal adviser or auditor provided that this person has provided an undertaking to keep confidential the existence and terms of this deed prior to such disclosure;
 - (c) to the Australian Taxation Office;
 - (d) with the express written consent of the other party;
 - (e) for the purpose of any party or Beneficiary enforcing this deed.

7. Warranties

- 7.1 Ms Higgins warrants that:
- (a) the matters referred to in this deed are true and correct;
 - (b) she has entered into this deed voluntarily;
 - (c) she has the legal capacity to enter into this deed;
 - (d) the Commonwealth has not made any promise, representation or inducement, or been party to any such conduct, in return for Ms Higgins entering into this deed other than as set out in this deed;
 - (e) she has had the full opportunity to consult with her legal advisors as to the nature and effect of this deed;
 - (f) she has not commenced any Claim against the Beneficiaries other than those identified in this deed;
 - (g) she has not made any claim for a compensation affected payment in relation to a day or days in the periodic payments period or the lump sum preclusion period within the meaning of section 1182(1)(b) of the SS Act;
 - (h) she has not received any compensation affected payment in relation to a day or days in the periodic payments period or the lump sum preclusion period within the meaning of section 1184(1)(b) of the SS Act;
 - (i) each warranty above is a separate representation and warranty, and that she has made the representations and given the warranties with the intention of inducing the Commonwealth to enter into this deed; and
 - (j) she is aware that the Commonwealth is relying on these warranties.

8. No Admissions of Liability Acknowledgement

- 8.1 The parties acknowledge and agree that this deed is made without any admissions of liability by any of the Beneficiaries.

9. Entire Agreement

- 9.1 This deed contains the entire agreement between the parties with respect to the resolution of all Claims related in any way to the Circumstances and supersedes all earlier representations, communications, agreements, understandings, negotiations and conduct made by, or existing between, the parties with respect to the resolution of any Claims related in any way to the Circumstances.
- 9.2 For the avoidance of doubt, clause 9.1 does not supersede agreements which are relevant to, but do not expressly record, the resolution of Claims related in any way to the Circumstances, including the mediation agreement in respect of the Mediation.

10. General

10.1 Severability

Any provision of this deed which is invalid or unenforceable must:

- (a) where it may be read down so as to give it a valid and enforceable operation of a partial nature, be read down to the minimum extent necessary to achieve that result; and
- (b) in any other case, the offending provision must be severed from this deed, in which event the remaining provisions operate as if the severed provision had not been included.

10.2 Waiver

- (a) a waiver by one party does not prejudice its rights in respect of any subsequent breach of this deed by the other party;
- (b) a party does not waive its rights under this deed because it grants an extension or other forbearance to the other party; and
- (c) no failure by a party to exercise, and no delay by a party in exercising, any rights under this deed will operate as a waiver.

10.3 Counterparts

This deed may be executed in multiple counterparts and, if so, the counterparts taken together will constitute the one binding deed.

10.4 Variation

This deed cannot be amended or varied except in writing signed by the parties.

10.5 Costs

Each party must pay its own costs of (including legal costs) and expenses in connection with the negotiation, preparation, execution and delivery of this deed.

10.6 Mediation

In the event of any dispute arising from or in connection with the terms of this deed, the parties agree that the dispute will be referred to mediation conducted by Rebecca Curran or her nominee.

10.7 Governing law

This deed is governed by the laws of, and each party submits to the non-exclusive jurisdiction of, the Australian Capital Territory.

Executed as a deed

Signed, sealed and delivered by Brittany
Mae Higgins in the presence of:



Signature of witness



Signature of Brittany Mae Higgins

LEON ZWIER

Full name of witness (print)

13.12.22

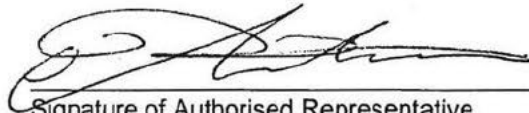
Date

21/333 COLLINS ST. MELBOURNE.
Address of witness (print)

Signed, sealed and delivered on behalf of
the Commonwealth of Australia (as
represented by the Department of
Finance) by an authorised representative in
the presence of:



Signature of witness



Signature of Authorised Representative

Bede Thomas Cahlan
Full name of witness (print)

13 DECEMBER 2022
Date

6 National Ct Barton
Address of witness (print) ACT

Contact: Noor Blumer
Direct Line: 0417 753 150
Email Address: noor@blumers.com.au
Our Reference: NXB:SJD:212285

21 December 2021

STRICTLY CONFIDENTIAL

Secretary of Finance
Rosemary Huxtable

By email only: rosemary.huxtable@finance.gov.au

Dear Ms Huxtable

RE: BRITTANY MAE HIGGINS

We act for Brittany Mae Higgins who suffered various injuries during her employment and while working at Parliament House. Ms Higgins' injuries include serious psychiatric injury, which is ongoing and other loss including past and future economic loss.

Ms Higgins' injuries were caused by a combination of the now widely-publicised sexual assault by a co-worker that occurred on 23 March 2019 and the manner in which her co-workers, supervisors and others responded in the immediate days and then months following the sexual assault. Ms Higgins' injuries have been exacerbated after the sexual assault became public, by the actions and the public statements made by senior members of the Australian Government, notwithstanding that Ms Higgins' unusually brave and universally acclaimed decision to speak out about her experience has had enormous public benefit.

As you will be aware the sexual assault is now the subject of criminal proceedings.

Ms Higgins' claims include, but are not limited to, the following:

- a. contraventions of the Sex Discrimination Act 1984 (Cth) with respect to sex discrimination, sexual harassment and victimisation. The Commonwealth is also vicariously liable for the unlawful conduct of its employees and agents who engaged in the contraventions or by permitting the conduct to occur;



- b. contraventions of the Fair Work Act 2009 (Cth);
- c. contraventions of the Privacy Act 1988 (Cth);
- d. contraventions of the Work Health and Safety Act 2011 (Cth);
- e. a claim under the Safety, Rehabilitation and Compensation Act 1988 (Cth); and
- f. common law claims in negligence.

Where appropriate, exemplary damages will be claimed.

These claims may be variously available against the Commonwealth of Australia as Ms Higgins' employer and in addition, the perpetrator, other employees of the Commonwealth, the Hon Senator Reynolds, the Hon Senator Cash, the Commonwealth and the Liberal Party.

As you will be aware, on 5 March 2021, the Australian Government announced an independent review into Commonwealth Parliamentary workplaces be led by the Sex Discrimination Commissioner, Ms Kate Jenkins. Ms Higgins considered it was appropriate to await for the review to be completed before taking any next steps. The review has now been completed and the *Set the Standard* report has been released.

At the present time, the only claim that our client has commenced to date is for ACT Victims of Crime Compensation. She has received modest amounts to cover the some of the expenses of her psychiatric treatment. Self-evidently, that compensation falls a long way short of compensating our client for the loss she has suffered and continues to suffer.

Our client has not yet notified claims to Comcare, the various regulatory agencies or otherwise. We are instructed to do all things necessary to try and resolve any claims without recourse to litigation but in the event that a negotiated resolution is not achieved within a reasonable timeframe, we anticipate receiving instructions to take those steps.

Given the public interest in this case, the pending criminal proceedings against the alleged perpetrator and our client's delicate state of health it would be appreciated if suitable persons with suitable authority contact the writer as a matter of urgency to discuss how to progress this matter confidentially. Medical and other material of a sensitive nature can then be provided directly on a 'need to know' basis.

While it is understood that even if our client is able to reach a negotiated resolution, that fact may eventually become public knowledge. Our client would prefer to keep all negotiations confidential and away from public scrutiny as far as possible in the interests of all parties but has no hesitation in notifying and filing proceedings in the usual manner if negotiations fail.

Please contact Noor Blumer on 0417 753 150 or by email as soon as possible.

Yours faithfully

BLUMERS Personal Injury Lawyers

**CC. Senator Cash senator.cash@aph.gov.au
Senator Reynolds senator.reynolds@aph.gov.au
Secretary of Finance rosemary.huxtable@finance.gov.au
Secretary of Attorney-General's Department
katherine.jones@ag.gov.au**

AUSTRALIAN CAPITAL TERRITORY
DRAFT STATEMENT OF PARTICULARS

Brittany Mae Higgins

Claimant

and

Commonwealth of Australia

Prime Minister Scott Morrison

Senator Michaelia Cash

Senator Linda Reynolds

Respondents

1. CLAIMANT'S PERSONAL PARTICULARS

- 1.1 The claimant was born on 7 December 1994.
- 1.2 On 23 March 2019, the claimant (then 25 years of age) was sexually assaulted at her workplace.
- 1.3 The claimant reported the sexual assault and was thereafter subject to damaging conduct by the respondents in breach of the *Sex Discrimination Act 1984* (Cth) and/or *Fair Work Act 2009* (Cth) arising out their response to that report including (but not limited to):
 - 1.3.1 the failure to provide appropriate or adequate support;
 - 1.3.2 the failure to implement an immediate, confidential and impartial investigation into the incident;
 - 1.3.3 the failure to implement remedial measures to assist the claimant continuing to work at the workplace following the assault;
 - 1.3.4 victimisation, including ostracism and being pressured not to discuss the assault or the respondents' handling of it;
 - 1.3.5 workplace bullying and harassment
 - 1.3.6 public statements made by senior members of the Australian Government about the claimant and about the assault; and

Filed on behalf of the claimant by:
BLUMERS Personal Injury Lawyers
Level 12
15 London Circuit
CANBERRA ACT 2601

DX 5737 CANBERRA
TEL 02 6208 2600
FAX 02 6208 2626
REF: NXB:KMT:NXB:212285

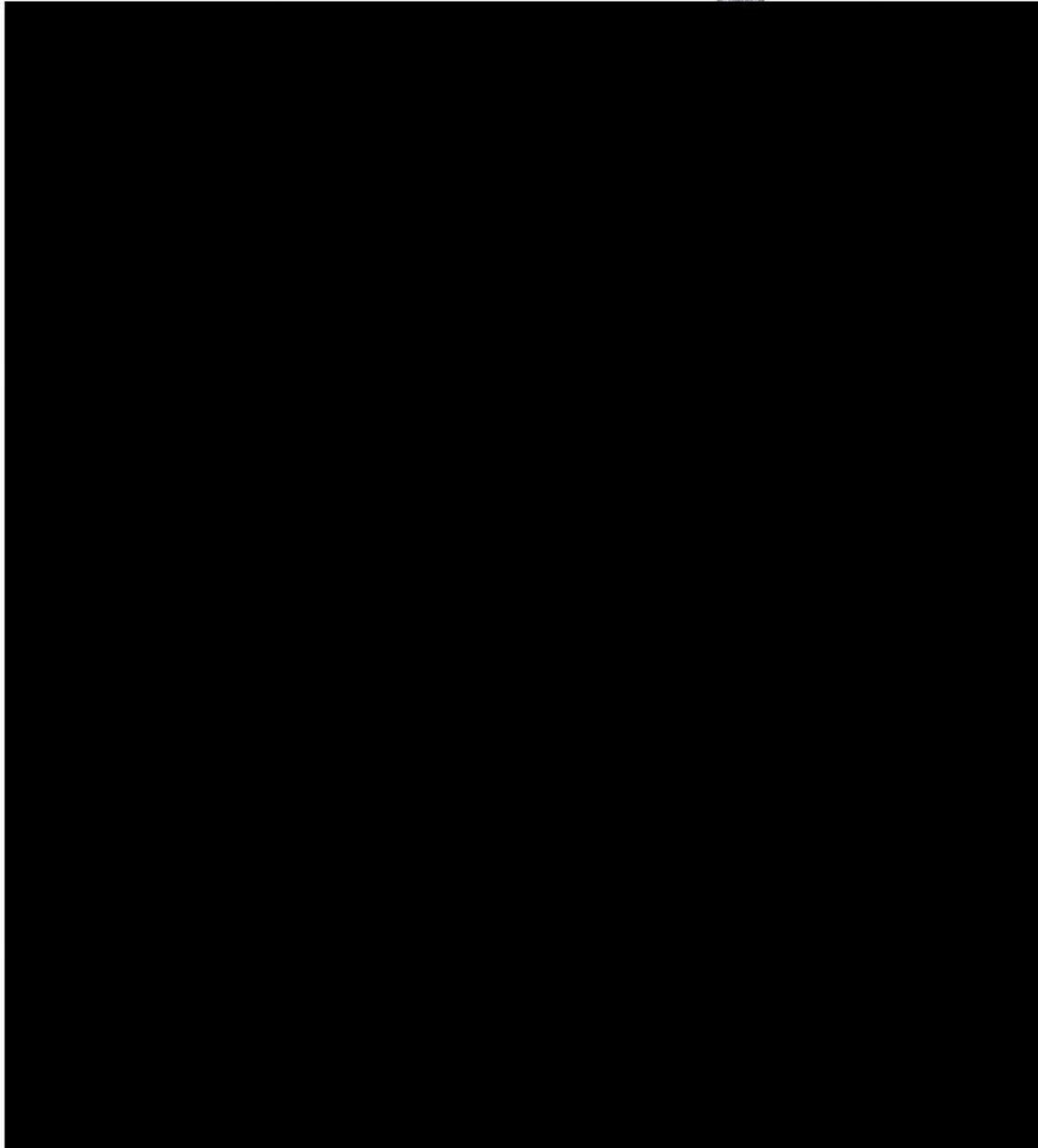
1.3.7 the disclosure of the claimant's personal information to third parties without her consent.

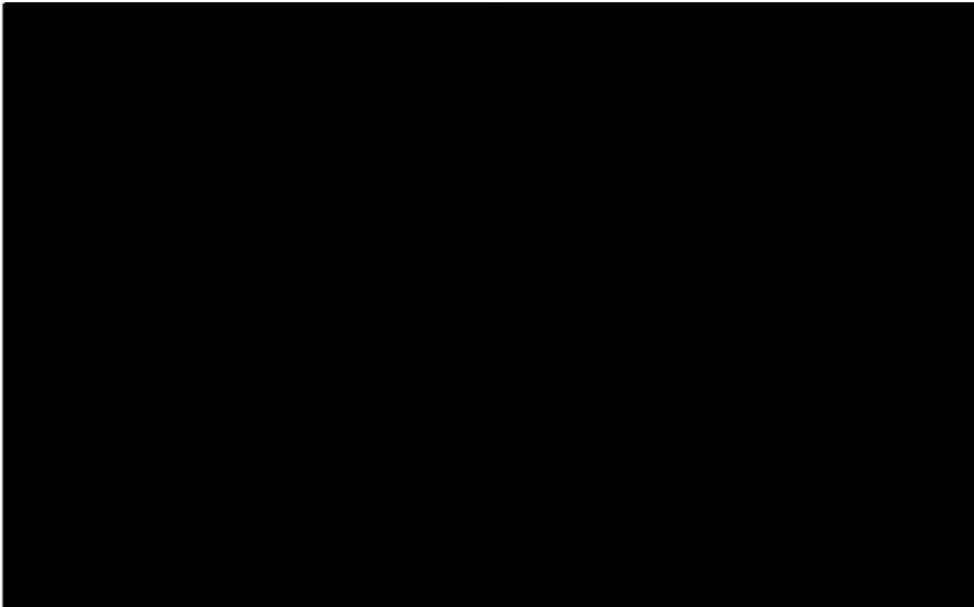
1.4 The claimant is now aged 28.

2. PARTICULARS OF INJURIES

2.1 Sexual assault and associated physical injuries;

2.2 Severe psychiatric injuries.





4. PARTICULARS OF ECONOMIC LOSS

Particulars of employment

- 4.1 The claimant was employed by the Honourable Steven Ciobo MP, Minister for Defence Industry as an Administrative and Media Assistant from about September 2018 on behalf of the Commonwealth of Australia pursuant to s 20(1) of the *Members of Parliament (Staff) Act 1984 (MOPS Act)* and the relevant enterprise agreement.
- 4.2 The claimant continued to work, based in Parliament House, Canberra until about February 2019.
- 4.3 From about February 2019 after Steve Ciobo's resignation, the claimant was employed by the Honourable Senator Linda Reynolds as a Media Adviser/Executive Assistant.
- 4.4 Following the sexual assault on 23 March 2019, the claimant continued to work albeit under treatment and a great deal of stress. On 24 June 2019 the claimant ceased working for the Honourable Senator Linda Reynolds.
- 4.5 On 6 June 2019 the claimant commenced employment with the Honourable Senator Michaelia Cash as an Executive Assistant/Office Manager.
- 4.6 The claimant, by reason of her injuries and disabilities was unable to continue in her employment and resigned on about 8 February 2021.

- 4.7 At the time the claimant ceased employment she was earning a salary of \$77,926.00 gross per annum plus superannuation. That is a nett income of \$1,163.58 nett per week plus superannuation.
- 4.8 On 5 August 2021 the *Commonwealth Members of Parliament Staff Enterprise Agreement 2020-23* (the **new Enterprise Agreement**) commenced and upon that commencement the claimant's salary would have increased to \$79,251 gross per annum plus superannuation, had she been able to continue in her employment. That is a nett income of \$1,180.00 per week plus superannuation.
- 4.9 Further, in accordance with the new Enterprise Agreement the claimant's salary would have increased by 1.70% of CPI at 12 and 24 months following the commencement of the new Enterprise Agreement.
- 4.10 Apart from 1 day, the claimant has not worked since 8 February 2021.

Particulars of past economic loss

- 4.11 The claimant makes a claim for past loss of earnings on the basis of loss of income at \$1,163.58 nett per week for the period 8 February 2021 to 5 August 2021 and \$1,180 nett per week for the period 6 August 2021 to 28 February 2022.
- 4.12 The claimant makes a claim for the past loss of superannuation consequent on lost earnings at 15.4% of gross weekly income, being \$230.78 per week for the period 8 February 2021 to 5 August 2021 and \$234.70 per week for the period 6 August 2021 to 28 February 2022.
- 4.13 Therefore, from 8 February 2021 to 5 August 2021 (28 weeks) the claimant claims \$1,163.58 nett per week (\$32,580.24) plus 15.4 % superannuation (\$6,461.84). As such, the amount claimed is \$39,042.08 for this period.
- 4.14 From 6 August 2021 to 28 February 2022 (29 weeks) the claimant claims \$1,180.00 nett per week (\$34,220.00) plus 15.4% superannuation (\$6,806.30). As such, the amount claimed \$41,026.30 for this period.
- 4.15 The claimant claims for past economic loss in the sum of **\$80,068.38**.

Particulars of future economic loss

- 4.16 The claimant makes a claim for future economic loss.
- 4.17 The claimant was successful and progressing in her career. The claimant had a reasonable expectation of being promoted regularly and to eventually pursue her own political career, before suffering from the injuries and disabilities.
- 4.18 The claimant expected to continue in employment until the age of 67 years.
- 4.19 The claimant has not been engaged in any form of employment since 8 February 2021, save for 1 day.
- 4.20 The claimant has been diagnosed as medically unfit for any form of employment, and has been given a very poor prognosis for future employment.
- 4.21 The claimant claims future economic loss, as follows:
- 4.22 For the period 1 March 2022 to 4 August 2022 = 22 weeks
- | | |
|---|-------------------|
| 22 weeks salary x \$1,180.00 pw = | \$25,960.00 |
| 22 weeks superannuation x \$234.70 pw = | <u>\$5,163.40</u> |
| Total: | \$31,123.40 |
- 4.23 For the period from 5 August 2022 onwards, the claimant's salary was due to increase to \$80,597.00 gross per annum in accordance with the new Enterprise Agreement on 5 August 2022 and the claimant claims future economic loss in accordance with that rate (\$1,198.00 nett per week).
- | | |
|-------------------------------------|-----------------------|
| \$1,198.00 nett salary pw x 1,224.2 | |
| (3% multiplier for 40 years) = | \$1,466,831.20 |
| \$238.70 superannuation x 1,244.2 | |
| (3% multiplier for 40 years) = | <u>\$ 296,990.54</u> |
| Total future loss = | \$1,789,781.70 |
| Less 15% for vicissitudes = | \$1,521,314.40 |
- 4.24 The claimant further claims for the likelihood that she would have succeeded in either progressing in the public service, politics or in the private sector and would have been remunerated at increasing rates. If the matter proceeds, the claimant will obtain a forensic accounting report but anticipates that this part of

the claim for future economic loss will be in the order of at least an additional \$1,000,000.

4.25 The claimant claims total future economic loss in the sum of **\$2,521,314.40**.

5. PARTICULARS OF GENERAL & AGGRAVATED DAMAGES

5.1 The claimant claims compensation for hurt, distress and humiliation in the sum of \$300,000.

5.2 The claimant's hurt, distress and humiliation has been exacerbated as a result of the manner in which the individual respondents behaved at the time of the assault and during the subsequent handling of the matter, as well as a result of the toxic and harmful culture and work environment that the claimant was subjected to by the respondents.

5.3 The claimant claims the sum of \$100,000 for aggravated damages.

6. PARTICULARS OF OUT OF POCKET EXPENSES

Particulars of past out of pocket expenses

6.1 The claimant claims for medical expenses.

6.2 The claimant claims for the cost of treatment expenses per the schedule annexed in the sum of \$3,623.92

6.3 The claimant claims for the cost of travel to and from treatment appointments in the sum of \$635.47

6.4 The claimant claims for past out of pocket expenses in the sum of \$4,259.89.

Particulars of future out of pocket expenses

6.5 The claimant claims for future treatment expenses.

6.6 The claimant will require fortnightly psychiatric appointments at a cost of \$285 each for 12 months, and every 2 months for 5 years and then twice yearly for the remainder of her life. The current cost per session is \$285. The calculations are as follows:

\$285 per session x 26 weeks = \$7,410

\$285 per session x 6 sessions = \$1,710 per annum = \$32.88 pw x 242.6 (3% multiplier for 5 years) = \$7,976

\$285 per session x 2 sessions = \$570 per annum = \$10.96 pw x 1396.8 (3% multiplier for 53 years) = \$15,309

Total: \$30,695.

- 6.7 The claimant will require private clinic hospitalisation from time to time and a buffer of \$20,000 is claimed.
- 6.8 The claimant will require ongoing GP appointments 6 times a year, costing about \$600 equivalent to about \$11.54 per week.
- 6.9 $\$11.54 \text{ pw} \times 1,447.4 \text{ (3\% multiplier for 58 years)} = \$16,703.00$
- 6.10 There will also be the costs of travel to and from her appointments estimated at about \$10 per week.
- 6.11 $\$10.00 \text{ pw} \times 1,447.4 \text{ (3\% multiplier for 58 years)} = \$14,474.00$
- 6.12 The claimant therefore claims future out of pocket expenses in the sum of \$81,872.00.

7. PARTICULARS OF GRIFFITHS v KERKEMEYER CLAIM

Particulars of past domestic assistance claim

- 7.1 The claimant claims for past domestic assistance pursuant to *Griffiths v Kerkemeyer* at a rate of \$50.00 per hour.
- 7.2 The claimant required assistance from family and friends to perform domestic tasks for the period 5 February 2021 to 28 February 2022 at 49 hours per week.
- 7.3 The calculation is $\$50 \times 49 \text{ hours per week} \times 54 \text{ weeks} = \$132,300.00$.

Particulars of future domestic assistance claim

- 7.4 The claimant claims for future domestic assistance pursuant to *Griffiths v Kerkemeyer*.
- 7.5 The claimant, by reason of her injuries and disabilities, has a very poor prognosis. She continues to require significant assistance from her family to perform domestic tasks and it is uncertain at what point this requirement will subside, if at all.
- 7.6 The claimant claims for future domestic assistance by way of a buffer in the sum of \$200,000.

And the claimant claims damages, costs and interest pursuant to the *Court Procedures Rules 2006*.

Annexure to Statement of Particulars (Rule 1304(4))

1. Schedule of out of pockets and travel to 15 February 2022;
2. ATO notices of assessment for the following financial years:
2019
2020

Dated this 16th day of February 2022

.....
Noor Blumer

Blumers Personal Injury Lawyers

Solicitors for the Claimant

DRAFT

PARTICULARS OF LIABILITY

Brittany Mae Higgins

Claimant

and

Commonwealth of Australia

Senator Michaelia Cash

Senator Linda Reynolds

Respondents

1. EMPLOYMENT BY MINISTER REYNOLDS

- 1.1 On about 1 March 2019, the claimant was employed by the Honourable Senator Linda Reynolds, on behalf of the Commonwealth, under the *Members of Parliament (Staff) Act 1984 (Cth) (MOPS Act)*.
- 1.2 Mr Bruce Lehrmann was also employed by Minister Reynolds, on behalf of the Commonwealth, under the MOPS Act.
- 1.3 On 2 March 2019, Senator Reynolds commenced as Minister for Defence Industry and as a member of Cabinet.
- 1.4 The claimant's role was media adviser. It was a junior role. She was the only Canberra-based female member of Minister Reynold's staff.
- 1.5 Mr Lehrmann's role was as senior advisor. It was a senior role. He was in a higher ranking role to the claimant.
- 1.6 Both the claimant and Mr Lehrmann worked at Parliament House.
- 1.7 In the week commencing March 2019, a new interim Chief of Staff, Ms Fiona Brown, employed by Minister Reynolds, on behalf of the Commonwealth, under the MOPS Act also commenced work in Minister Reynolds' office.

2. SEXUAL ASSAULT

- 2.1 On the evening of 22 March 2019, Mr Lehrmann, the claimant and some other colleagues went out for drinks after work.
- 2.2 Mr Lehrmann bought numerous rounds of drinks and the claimant became heavily and patently intoxicated. It was not noticed by the claimant that Mr Lehrmann himself was not drinking.
- 2.3 As a result of her intoxication, the claimant became unsteady on her feet and fell over. Mr Lehrmann assisted her to get up. The claimant decided that she needed to go home and Mr Lehrmann walked the claimant to a taxi.
- 2.4 Without invitation or agreement with the claimant, Mr Lehrmann also got into the taxi and stated that they could share the taxi ride home as he lived in the same direction as the claimant.
- 2.5 Without invitation or agreement with the claimant, Mr Lehrman then directed the taxi to stop at Parliament House alleging that he wanted to retrieve something from his office.
- 2.6 However, on arrival at Parliament House, without advising or obtaining the agreement of the claimant, Mr Lehrmann paid the taxi fare and then directed the claimant to get out of the taxi and go with him into Parliament House.
- 2.7 Mr Lehrmann and the claimant entered Parliament House via the Ministerial entrance. Mr Lehrman instructed the claimant to be quiet. They proceeded to the security checkpoint where they were met by two security guards.
- 2.8 Mr Lehrmann had his staff pass which allowed him to enter the building. The claimant did not have her staff pass with her and had to be signed in via a guest sign in book. She was unsteady on her feet and had difficulty remaining upright and signing her name. She was visibly affected by alcohol.
- 2.9 Mr Lehrmann led the claimant to the Ministerial Suite of Minister Reynolds.
- 2.10 Inside Minister Reynolds' office, Mr Lehrmann looked for something. The claimant sat on window ledge overlooking the Prime Minister's courtyard, feeling very 'out of it'.
- 2.11 The claimant was then either taken over to the couch by Mr Lehrmann or went there herself and lost consciousness.

- 2.12 The claimant later awoke by the feeling of pain from her leg being crushed. She realised she was on the couch and that Mr Lehrmann was on top of her having sexual intercourse with her and pinning her leg down with his knee.
- 2.13 The claimant had not consented to sexual intercourse with Mr Lehrmann.
- 2.14 The claimant began crying and told Mr Lehrmann to stop at least half a dozen times but he did not stop. The claimant could not move from under him due to his knee pinning down her leg.
- 2.15 Mr Lehrmann then finished a few minutes later. He got up without speaking to the claimant and then left Minister Reynolds' office.
- 2.16 The claimant was unable to get up and passed out again.
- 2.17 A security guard entered Minister Reynolds' office after the sexual assault had taken place and Mr Lehrmann had departed. The security guard saw the claimant passed out on the couch with her clothing mostly pulled up or off but did not render any assistance to her.
- 2.18 A while later, another security guard entered Minister Reynolds' office and yelled out something to the effect of '*Is everyone okay in there?*'. They awoke the claimant but the security guard left without rendering assistance to her.
- 2.19 The claimant eventually managed to exit Minister Reynolds' office at about 9am the following morning. She saw two security guards at the Ministerial entrance to Parliament House on the way out but they did not speak to her or render her any assistance.
- 2.20 The movements of Mr Lehrmann and the claimant at Parliament House on 23 March 2019 were recorded by CCTV security cameras in and throughout Parliament House (other than when they were inside Minister Reynolds' office).

3. HANDLING OF SEXUAL ASSAULT BY MINISTER REYNOLDS' OFFICE

- 3.1 On Monday 25 March 2019, the claimant attended work at Parliament House, as did Mr Lehrmann. They did not communicate. No one spoke to the claimant about the events of the previous Saturday.
- 3.2 On Tuesday 26 March 2019, Ms Brown informed Mr Lehrmann and the claimant that she needed to speak to each of them in her office.

- 3.3 Ms Brown first spoke to Mr Lehrmann. After about 45 minutes Mr Lehrmann emerged from Ms Brown's office and proceeded to pack his belongings and leave Parliament House.
- 3.4 Ms Brown then spoke to the claimant. The claimant understood from Ms Brown that she wanted to discuss the events of 22/23 March 2019. The claimant recounted to Ms Brown her recollection of the events, including that Mr Lehrmann had sexually assaulted her.
- 3.5 Ms Brown confirmed that the CCTV footage demonstrated the claimant to have been visibly drunk when coming through the entrance to the Ministerial wing of Parliament House and that Mr Lehrmann had said that he not been drinking that evening.
- 3.6 The claimant broke down. Ms Brown informed her that Mr Lehrmann had been dismissed and would not be returning. Ms Brown instructed the claimant to take the rest of the day off and gave her a brochure for the Employee Assistance Program.
- 3.7 Ms Brown did not ask the claimant if she needed (nor did she offer to provide) any further medical or trauma counselling.
- 3.8 Ms Brown did not ask the claimant if she wanted to report the sexual assault to the Police. She did not advise the claimant that she would be initiating an investigation and Ms Brown did not ask the claimant if she needed (nor did she offer to provide) legal advice about the events.
- 3.9 During the week following the sexual assault, Mr Yaron Finklestein, Principal Secretary to the Prime Minister, was a regular presence in Minister Reynolds' office advising Ms Brown on how to deal with the claimant in light of the sexual assault by Mr Lehrmann. However, Mr Finklestein did not seek the claimant's views about what remedies or outcomes she wanted.
- 3.10 Later that week Ms Brown asked the claimant if she had contacted the Employee Assistance Program. The claimant advised that she had called the number and been informed that there was a two-month wait period to speak to a psychologist.
- 3.11 Ms Brown did not arrange for any alternative counselling service to be provided to the claimant.

- 3.12 The claimant asked Ms Brown several times if she could view the CCTV footage from 22/23 March 2019 but Ms Brown rebuffed her requests. The claimant has still never been granted access to view the CCTV footage.
- 3.13 On 27 March 2019 the claimant met with members of the Australian Federal Police (AFP) Parliament House Unit. They informed her that they had been told to investigate a sexual assault. The claimant told the AFP about the events of the 22/23 March 2019 including that Mr Lehrmann had sexually assaulted her.
- 3.14 On 1 April 2019, Minister Reynolds was at Parliament House and met with the claimant together with Ms Brown. The meeting took place inside Minister Reynolds' office, with the claimant having to sit right near the couch on which she had been sexually assaulted.
- 3.15 Minister Reynolds apologised to the claimant for what had happened to her and said that she was "*shocked and appalled by what had taken place*" and it made her feel "*physically ill*".
- 3.16 Minister Reynolds told the claimant that she was free to pursue the matter with the AFP. However, Minister Reynolds did not ask the claimant if she needed (nor did she offer to source or pay for) legal assistance or advice about dealing with the AFP in their investigation or about seeking redress.
- 3.17 Minister Reynolds did not arrange for any medical, trauma counselling or other assistance to be provided to the claimant.
- 3.18 The meeting of 1 April 2019 was the first and last occasion on which Minister Reynolds directly spoke to the claimant about the sexual assault.
- 3.19 Approximately two weeks after the sexual assault, the AFP Parliament House Unit elevated the investigation of the sexual assault to the Belconnen AFP Sexual Assault Crimes Unit. Officers arranged for the claimant to see a counsellor from the Canberra Rape Crisis Centre, which was the first time the claimant saw a trained counsellor about the sexual assault.
- 3.20 The Belconnen AFP Sexual Assault Crimes Unit informed the claimant that they were having difficulty retrieving the CCTV footage from the relevant channels in Parliament House.

- 3.21 On 11 April 2019 a Federal election was called.
- 3.22 At or about that time, the claimant raised with Ms Brown the issue of sick leave for her mental health and also needing time off work to assist the AFP in its investigation. Ms Brown demonstrated an unwillingness to discuss the issue and made it clear to the claimant that it was her problem to deal with.
- 3.23 Ms Brown informed the claimant that she had two options. She could return home to the Gold Coast on paid leave for the duration of the election campaign, but this would negatively impact her prospects of having a job to reapply for after the election. Alternatively, the claimant could "stay onboard" Minister Reynolds' team and work on the election campaign in Western Australia.
- 3.24 Ms Brown made it clear by her words and demeanour that the events of 22/23 March 2019 must be put to one side; that the claimant ought remain silent about the sexual assault, in order to keep her job/career.
- 3.25 The claimant was fearful of losing her career and elected to go to Western Australia to assist with Minister Reynolds' election campaign. In that context the claimant felt she had no choice but to abandon pursuit of the complaint of sexual assault with the AFP.
- 3.26 On 13 April 2019, the claimant informed the Belconnen AFP Sexual Assault Crimes Unit that she no longer wished to pursue the complaint of sexual assault in light of her work demands.
- 3.27 The claimant went to Western Australia to work on Minister Reynolds' election campaign. She was required to work mostly on her own in a hotel room, 7 days a week for 6 weeks. Her mental health deteriorated.
- 3.28 Minister Reynolds did not engage with the claimant at all during the election campaign. She avoided the claimant and made clear that she did not want the claimant attending events with her. Minister Reynolds did not enquire how the claimant was, or if the claimant was receiving counselling or any other support.

4. HANDLING OF SEXUAL ASSAULT BY MINISTER CASH'S OFFICE

- 4.1 After the election, it was tolerably clear that Minister Reynolds was not interested in having the claimant as a member of her staff again.
- 4.2 The claimant applied for roles with other Ministers.
- 4.3 On about 6 June 2019, the claimant was employed by the Honourable Senator Michaelia Cash, on behalf of the Commonwealth, under the MOPS Act, as Executive Assistant / Office Manager (a classification within the Commonwealth Members of Parliament Staff Enterprise Agreement).
- 4.4 Senator Cash was at that time Minister for Employment, Skills, Small and Family Business and a member of Cabinet.
- 4.5 On 18 October 2019, a journalist lodged an inquiry with Minister Reynolds' office and with the AFP, about a sexual assault alleged to have occurred in Minister Reynolds' office.
- 4.6 Minister Reynolds informed Minister Cash's Chief of Staff, Mr Daniel Try, also employed by Minister Cash, on behalf of the Commonwealth, under the MOPS Act, about the sexual assault of the claimant by Mr Lehrmann on 23 March 2019. Mr Daniel Try approached the claimant about talking to Minister Cash about the sexual assault, he asked her if she wanted to talk to Minister Cash about it or should he. The claimant indicated to Mr Daniel Try she preferred for him to talk to Minister Cash about the incident. He did not need any further information from the claimant to do this.
- 4.7 On 19 October 2019, Mr Try informed the claimant that Minister Cash's office would try to quash the media story.
- 4.8 Thereafter, members of Minister Cash's office including Regina Camera, also employed by Minister Cash, on behalf of the Commonwealth, under the MOPS Act, impressed on the claimant the importance of the claimant not talking to anyone about the sexual assault, especially the media. Members of Minister Cash's office, including Minister Cash herself on 10 November 2020, began 'checking in' on the claimant but only out of concern that she might speak to the press.

- 4.9 While the claimant remained silent about the sexual assault, it became apparent that knowledge of the incident had spread well beyond Minister Reynolds, Ms Brown, Minister Cash and Mr Try without the claimant's knowledge or consent. This was because various staff in Parliament House broached the topic with the claimant from time to time, indicating to her that they were aware of the details of the sexual assault. This was extremely distressing for the claimant.
- 4.10 The claimant experienced ongoing difficulty, including panic, when entering her workplace through the Ministerial entrance at Parliament House, where Mr Lehrmann and she had entered on the night she was sexually assaulted.
- 4.11 The claimant informed Minister Cash about her ongoing difficulty in entering the workplace through the Ministerial entrance. Minister Cash indicated to the claimant that, in effect, she had to '*suck it up*'.
- 4.12 Minister Cash did not enquire if the claimant was receiving medical, counselling or other psychological support to assist her in overcoming the trauma, nor did Minister Cash offer to arrange any such assistance for the claimant.
- 4.13 The claimant's mental health continued to worsen.
- 4.14 On 5 February 2021 the claimant resigned from her employment in Minister Cash's office, because of the ongoing effects of the trauma from the sexual assault, the embarrassment and humiliation that she felt when confronted by other staff members about the sexual assault, the flashbacks and anxiety she experienced when entering the building through the Ministerial entrance and the distress of being forced to remain silent about the events. The claimant was told to '*take a week*' and the resignation was not ultimately processed until 12 February 2021.
- 4.15 On 24 February 2021 the claimant formally renewed her complaint of sexual assault with the AFP. Mr Lehrmann has since been charged with sexual assault and the criminal trial is due commence on 6 June 2022.

5. LIABILITY FOR SEXUAL HARASSMENT

5.1 The sexual assault of the claimant by Mr Lehrman set out in Part 2 above constituted sexual harassment and/or harassment on the ground of sex within the meaning of s 28A and s 28AA respectively of the *Sex Discrimination Act 1984* (Cth) (**SDA**) insofar as it was:

- 5.1.1 an unwelcome sexual advance to the claimant; and/or
- 5.1.2 unwelcome conduct of a sexual nature in relation to the claimant,
- 5.1.3 unwelcome conduct of a seriously demeaning nature in relation to the claimant by reason of her sex;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the claimant would be offended, humiliated or intimidated.

5.2 By reason of the matters set out in Part 1 above:

5.2.1 Mr Lehrman and the claimant were 'fellow employees' and/or 'workplace participants'; and

5.2.2 Parliament House was a 'workplace', being a place where Mr Lehrmann and the claimant worked or otherwise carried on functions in connection with being workplace participants,

within the meaning of s 28B(7) of the SDA.

5.3 By reason of the matters set out in paragraphs 5. 1 and 5. 2 above, Mr Lehrman engaged in unlawful sexual harassment of the claimant in contravention of s 28B(2) and/or s 28B(6) of the SDA.

5.4 Further, and/or in the alternative, by reason of s 106(1)(b) of the SDA, the Commonwealth is vicariously liable for the unlawful sexual harassment of the claimant by Mr Lehrmann.

6. LIABILITY FOR SEX DISCRIMINATION

6.1 The Commonwealth's vicarious liability for the sexual harassment of the claimant by Mr Lehrmann as set out in paragraph 5. 4 above constituted direct discrimination within the meaning of s 5(1) of the SDA in that by reason of the claimant being a woman, she was treated less favourably than a man would have been treated in circumstances that are the same or are not materially different.

- 6.2 For these purposes, the circumstances that are the same or are not materially different include:
- 6.2.1 being a junior work colleague; and
 - 6.2.2 being heavily and patently intoxicated.
- 6.3 This amounted to a contravention of s 14(2) of the SDA by subjecting the claimant to a detriment, namely sexual assault and sexual harassment.
- 6.4 Further, by reason of the matters set out in Parts 1, 3 and 4 above, the Commonwealth, Minister Reynolds and Minister Cash engaged in unlawful direct discrimination within the meaning of s 5(1) of the SDA in that by reason of the claimant being a woman, she was treated less favourably than a man would have been treated in circumstances that are the same or are not materially different.
- 6.5 This amounted to a contravention of s 14(2)(a), (b) and/or (d) of the SDA in that:
- 6.5.1 failing to conduct a detailed investigation into the sexual assault;
 - 6.5.2 failing to ask the claimant if she needed (or offering to source) legal assistance or advice about dealing with the AFP in their investigation or about seeking redress;
 - 6.5.3 failing to arrange for any medical, trauma counselling or other assistance for the claimant;
 - 6.5.4 giving her the ultimatum in paragraph 3.23 and 3.24 above;
 - 6.5.5 being dismissive of and requiring the claimant to work despite her deteriorating mental health;
 - 6.5.6 isolating the claimant as set out in paragraph 3.27;
 - 6.5.7 ostracising the claimant as set out in paragraph 3.28
 - 6.5.8 transfer to Minister Cash;
 - 6.5.9 requiring the claimant to suppress interaction with the media and stay silent about the sexual assault as set out in paragraph 4.8;
 - 6.5.10 failing to keep the sexual assault confidential and thereby subjecting the claimant to gossip;
 - 6.5.11 requiring the claimant to enter her workplace through the Ministerial entrance at Parliament House despite this inducing flashbacks,

- 6.6 Further, or in the alternative, this conduct amounted to a contravention of s 14(2)(c) of the SDA in that, in the circumstances set out above, the claimant's continuing employment was untenable and her resignation was a constructive dismissal.

7. LIABILITY FOR DISABILITY DISCRIMINATION

- 7.1 At all material times after the sexual assault, the claimant suffered from a disability being the psychological effects associated with the sexual assault, anxiety, depression and/or PTSD.
- 7.2 By reason of the matters set out in Parts 1, 3 and 4 above, the Commonwealth, Minister Reynolds and Minister Cash engaged in unlawful indirect discrimination within the meaning of s 6(2) of the *Disability Discrimination Act, 1992 (DDA)* in that:
- 7.2.1 the conditions or requirements placed on the claimant included continuing to work after the sexual assault as normal;
 - 7.2.2 because of the claimant's disability would have been able to comply if reasonable adjustments had been made but the respondents did not make those reasonable adjustments, being:
 - 7.2.2.1 conducting a detailed investigation into the sexual assault;
 - 7.2.2.2 asking the claimant if she needed (and/or offering to source) legal assistance or advice about dealing with the AFP in their investigation or about seeking redress;
 - 7.2.2.3 arranging for any medical, trauma counselling or other assistance for the claimant;
 - 7.2.2.4 not giving the claimant the ultimatum in paragraph 3.23 and 3.24 above and instead granting her request to take sick leave to deal with her deteriorating mental health;
 - 7.2.2.5 being compassionate and flexible in the face of the claimant's deteriorating mental health;
 - 7.2.2.6 ensuring that the claimant was not isolated as set out in paragraph 3.27 and instead provided with collegiality and support;

7.2.2.7 ensuring that the claimant was not ostracised as set out in paragraph 3.28 and instead was fully part of the election campaign;

7.2.2.8 not directing or requiring the claimant to suppress interaction with the media and stay silent about the sexual assault as set out in paragraph 4.8;

7.2.2.9 ensuring that all aspects of the sexual assault was kept confidential;

7.2.2.10 not requiring the claimant to enter her workplace through the Ministerial entrance at Parliament House because it induced flashbacks; and

7.2.3 the failure to make the reasonable adjustments had or was likely to have the effect of disadvantaging requirement persons with the disability

7.3 This amounted to a contravention of s 15(2)(a), (b) and/or (d) of the DDA.

7.4 Further, or in the alternative, this conduct amounted to a contravention of s 15(2)(c) of the DDA in that, in the circumstances set out above, the claimant's continuing employment was untenable and her resignation was a constructive dismissal.

8. LIABILITY FOR VICTIMISATION

8.1 By reason of the matters set out in paragraphs 3.4, 3.13, 4.6 and Parts 5 and 6 above, the claimant made an allegation that a person, Mr Lehrmann, had done an act that is unlawful by reason of a provision of Part II of the SDA.

8.2 On the ground set out in paragraph 7. 1 above, Minister Reynolds and members of Minister Reynolds' staff (including Ms Brown) committed acts of unlawful victimisation against the claimant within the meaning of s 47A of the SDA by subjecting, or threatening to subject, the claimant to detriments set out in Part 3 above, namely:

8.2.1 failing to initiate any, or any proper, investigation into the sexual assault of the claimant by Mr Lehrmann;

- 8.2.2 failing to offer and/or arrange any medical, trauma or rape counselling or psychological assistance in respect of the sexual assault;
 - 8.2.3 failing to offer and/or arrange assistance for the claimant in relation to the sexual assault including but not limited to legal assistance for the police investigation and advice as to remedies;
 - 8.2.4 failing to support or facilitate the applicant pursuing a complaint of sexual assault with the AFP;
 - 8.2.5 refusing to provide the claimant with access to the CCTV footage of Parliament House from 23 March 2019;
 - 8.2.6 requiring the claimant to attend a meeting in the same location in which the claimant had been sexually assaulted;
 - 8.2.7 pressuring the claimant to remain silent about the sexual assault in order to keep her job, on the basis that pursuing the matter would attract unwanted adverse attention to Minister Reynolds, Minister Cash and by association, the Liberal Parliamentarians;
 - 8.2.8 pressuring the claimant by suggesting that her job opportunities would be impaired if she took paid leave during the election campaign when she advised that she needed to manage the effects of the sexual assault;
 - 8.2.9 sending the claimant to Western Australia to work on the election campaign in isolation and without support around her;
 - 8.2.10 ostracising the claimant during the election campaign by avoiding her and making clear that the claimant was not wanted at campaign events; and
 - 8.2.11 disclosing details of the sexual assault to other staff in Parliament House without the claimant's consent.
- 8.3 On the ground set out in paragraph 7. 1 above, Minister Cash and members of Minister Cash's staff (including Mr Try and Ms Camera) committed acts of unlawful victimisation against the claimant within the meaning of s 47A of the SDA by subjecting, or threatening to subject, the claimant to a detriment, namely:

- 8.3.1 failing to offer and/or arrange any medical, trauma or rape counselling or psychological assistance in respect of the sexual assault;
 - 8.3.2 failing to offer and/or arrange assistance for the claimant in relation to the sexual assault including but not limited to legal assistance for the police investigation and advice as to remedies;
 - 8.3.3 failing to support or facilitate the applicant pursuing a complaint of sexual assault with the AFP;
 - 8.3.4 pressuring the claimant to remain silent about the sexual assault in order to keep her job;
 - 8.3.5 subjecting the claimant to repeated 'check ins' to confirm that she had not spoken to the media;
 - 8.3.6 disclosing details of the sexual assault to other staff in Parliament House without the claimant's consent;
 - 8.3.7 requiring the claimant to continue entering the workplace through the Ministerial entrance despite her ongoing difficulty, including panic, in doing so and failing to arrange any medical, counselling or other support to assist with overcoming the anxiety.
- 8.4 In addition, the Commonwealth is vicariously liable at common law for the acts of victimisation set out in paragraphs 7. 2 and 7. 3 above in that:
- 8.4.1 each of Ministers Reynolds and Cash were agents of the Commonwealth and had ostensible authority to engage in the acts outlined in those paragraphs;
 - 8.4.2 the members of staff of each of Ministers Reynolds and Cash (including Ms Brown, Mr Try, and Ms Camera) were employees of the Commonwealth and engaged in the acts outlined in those paragraphs in the course of their employment.

9. LIABILITY FOR NEGLIGENCE

- 9.1 By reason of the matters set out in Part 1 above, Ministers Reynolds and Cash, as the persons responsible under s 20 of the MOPS Act for employing the claimant on behalf of the Commonwealth in their respective offices, were at all relevant times under a duty to the claimant to take reasonable care to avoid exposing her to the risk of sustaining a recognisable psychiatric injury (or its exacerbation) that was reasonably foreseeable in all the circumstances, in the sense that the risk was not far-fetched or fanciful.
- 9.2 By reason of the matters set out in Part 2 and paragraphs 3. 4, 3. 13 and 4. 6 above, that duty was enlivened as a result of the claimant's being sexually assaulted in the workplace by a colleague and those circumstances being brought to the attention of each of Ministers Reynolds and Cash.
- 9.3 The content of the duty required each of Ministers Reynolds and Cash to prevent the claimant from suffering psychiatric injury (or its exacerbation) by taking such steps as were reasonably able to be taken in the circumstances, including but not limited to:
- 9.3.1 developing and implementing an appropriate policy for receiving and appropriately handling and investigating complaints of sexual assault, sexual harassment and discrimination from staff within their offices;
 - 9.3.2 educating supervisors within their offices to develop and exercise the necessary skills to appropriately manage complaints of sexual assault, sexual harassment and discrimination including by maintaining confidentiality;
 - 9.3.3 arranging access to, and encouraging the claimant to access, medical, counselling, police or other legal assistance to support the claimant to recover from the sexual assault; and
 - 9.3.4 changing the claimant's working conditions so as to avoid or reduce the stressors affecting or retraumatising her such as:
 - 9.3.4.1 working in isolation;
 - 9.3.4.2 attending meetings in the location where the sexual assault occurred;
 - 9.3.4.3 using the Ministerial entrance to enter the workplace.

9.4 For the reasons set out in Parts 3 and 4 above, both Ministers Reynolds and Cash fell short of this standard and thereby breached the duty of care they owed to the claimant.

10. LOSS AND DAMAGE

10.1 The injuries and disabilities, and consequent loss and damage, particularised in the Statement of Particulars dated 16 February 2022 were caused by the cumulative effect of:

10.1.1.1 the unlawful sexual harassment, sex discrimination and victimisation under the SDA;

10.1.1.2 The unlawful disability discrimination; and/or

10.1.1.3 the breaches of the duty of care.

Dated this 3rd day of March 2022

Nooraini Blumer

Blumers Personal Injury Lawyers

Solicitors for the Plaintiff

ATTACHMENT 2 – EVENTS COMPLAINED ABOUT

1. PARTIES

- 1.1 The Claimant was employed by the Commonwealth of Australia (First Respondent) between about 1 March 2019 and 5 February 2021.
- 1.2 At all material times, the Commonwealth of Australia (**Commonwealth**) was vicariously liable for the conduct of the following persons as described in Parts 3, 4 and 5 below:
 - 1.2.1 Mr Bruce Lehrmann;
 - 1.2.2 all of the employees of the Commonwealth named below; and
 - 1.2.3 the security guards engaged by the Office of Parliamentary Services who were rostered on at Parliament House on the evening of 22 March 2019 and the morning of 23 March 2019.
- 1.3 At all material times, Senator Reynolds (the Second Respondent) was a member of the Liberal Party and a Senator for Western Australia. As at March 2019, Senator Reynolds held the portfolios of Minister for Defence Industry, Minister for Emergency Management and North Queensland Recovery and a Member of Cabinet. Following the Federal Election, in May 2019, Senator Reynolds was appointed Minister of Defence. In March 2021, Senator Reynolds' portfolios were changed to that of Minister for Government Services and Minister for the National Disability Insurance Scheme.
- 1.4 At all material times, Senator Michaelia Clare Cash (the Third Respondent) was a member of the Liberal Party and a Senator for Western Australia. As at March 2019, Senator Cash held the portfolio of Minister for Small and Family Business, Skills and Vocational Education. Following the Federal Election in May 2019, Senator Reynolds was appointed as Minister of Employment, Skills, Small and Family Business. In October 2022, Senator Cash was appointed as Deputy Leader of the government in the Senate and in March 2021, Senator Cash was appointed as Attorney-General and Minister for Industrial Relations.

2. BACKGROUND

- 2.1 On or about 1 March 2019, the Claimant was employed by Senator Reynolds on behalf of the Commonwealth pursuant to the *Members of Parliament (Staff) Act 1984* (Cth) (MOPS Act).
- 2.2 Mr Lehrmann was also employed by Senator Reynolds, on behalf of the Commonwealth, under the MOPS Act.
- 2.3 On 2 March 2019, Senator Reynolds commenced as Minister for Defence Industry and as a member of Cabinet.
- 2.4 The Claimant's role was media adviser. It was a junior role. She was the only Canberra-based female member of Senator Reynolds' staff.
- 2.5 Mr Lehrmann's role was as senior advisor. It was a senior role. He was in a higher ranking role to the Claimant.
- 2.6 Both the Claimant and Mr Lehrmann worked at Parliament House.
- 2.7 In the week commencing March 2019, a new interim Chief of Staff, Ms Fiona Brown, employed by Senator Reynolds, on behalf of the Commonwealth, under the MOPS Act also commenced work in Senator Reynolds' office.

3. SEXUAL ASSAULT

- 3.1 On the evening of 22 March 2019, Mr Lehrmann, the Claimant and some other colleagues went out for drinks after work.
- 3.2 Mr Lehrmann bought numerous rounds of drinks and the Claimant became heavily and patently intoxicated. It was not noticed by the Claimant that Mr Lehrmann himself was not drinking.
- 3.3 As a result of her intoxication, the Claimant became unsteady on her feet and fell over. Mr Lehrmann assisted her to get up. The Claimant decided that she needed to go home and Mr Lehrmann walked the Claimant to a taxi.
- 3.4 Without invitation or agreement with the Claimant, Mr Lehrmann also got into the taxi and stated that they could share the taxi ride home as he lived in the same direction as the Claimant.
- 3.5 Without invitation or agreement from the Claimant, Mr Lehrman then directed the taxi to stop at Parliament House alleging that he wanted to retrieve something from his office.

- 3.6 However, on arrival at Parliament House, without advising or obtaining the agreement of the Claimant, Mr Lehrmann paid the taxi fare and then directed the Claimant to get out of the taxi and go with him into Parliament House.
- 3.7 Mr Lehrmann and the Claimant entered Parliament House via the Ministerial entrance. Mr Lehrman instructed the Claimant to be quiet. They proceeded to the security checkpoint where they were met by two security guards.
- 3.8 At the security checkpoint, Mr Lehrmann and the Claimant had to sign-in to enter the building. The Claimant was visibly affected by alcohol. Mr Lehrmann signed on his own behalf and also on behalf of the Claimant.
- 3.9 Mr Lehrmann led the Claimant to the Ministerial Suite of Senator Reynolds.
- 3.10 Inside Senator Reynolds' Suite, Mr Lehrmann looked for something. The Claimant sat on window ledge overlooking the Prime Minister's courtyard, feeling very 'out of it'.
- 3.11 The Claimant was then either taken over to the couch by Mr Lehrmann or went there herself and passed out.
- 3.12 The Claimant later awoke by the feeling of pain from her leg being crushed. She realised she was on the couch and that Mr Lehrmann was on top of her having sexual intercourse with her and pinning her leg down with his knee.
- 3.13 The Claimant had not consented to any sexual advance or sexual intercourse with Mr Lehrmann.
- 3.14 The Claimant began crying and told Mr Lehrmann to stop, at least a half a dozen times but he did not stop. The Claimant could not move from under him due to his knee pinning down her leg.
- 3.15 Mr Lehrmann then finished a few minutes later. He got up without speaking to the Claimant and then left Senator Reynolds' Suite.
- 3.16 The Claimant was unable to get up and passed out again.
- 3.17 A security guard entered Senator Reynolds' office after the sexual assault had taken place and Mr Lehrmann had departed. The security guard saw the Claimant passed out on the couch with her clothing mostly pulled up or off but did not render any assistance to her.

- 3.18 A while later, another security guard entered Senator Reynolds' office and yelled out something to the effect of 'Is everyone okay in there?'. The security guard then woke the Claimant but left without rendering any assistance to her.
- 3.19 The Claimant eventually managed to exit Senator Reynolds' Suite at about 9am the following morning. She saw two security guards at the Ministerial entrance to Parliament House on the way out but they did not speak to her or render her any assistance.
- 3.20 The movements of Mr Lehrmann and the Claimant at Parliament House on 23 March 2019 were recorded by CCTV security cameras in and throughout Parliament House (other than when they were inside Senator Reynolds' Suite).
- 3.21 After the Claimant left Parliament House, the security guards and/or other persons engaged by the Office of Parliamentary Services (or another arm of the Commonwealth) cleaned Senator Reynolds' Ministerial Suite thereby removing or destroying evidence of the sexual assault.
- 4. HANDLING OF SEXUAL ASSAULT BY SENATOR REYNOLDS' OFFICE**
- 4.1 On Monday 25 March 2019, the Claimant attended work at Parliament House, as did Mr Lehrmann. They did not communicate.
- 4.2 On Tuesday 26 March 2019, Ms Brown informed Mr Lehrmann and the Claimant that she needed to speak to each of them in her office.
- 4.3 Ms Brown first spoke to Mr Lehrmann. After about 45 minutes Mr Lehrmann emerged from Ms Brown's office and proceeded to pack his belongings and leave Parliament House.
- 4.4 Ms Brown then spoke to the Claimant. The Claimant understood from Ms Brown that she wanted to discuss the events of 22/23 March 2019. The Claimant recounted to Ms Brown her recollection of the events, including that Mr Lehrmann had sexually assaulted her.
- 4.5 Ms Brown confirmed that the CCTV footage demonstrated the Claimant to have been visibly drunk when coming through the entrance to the Ministerial wing of Parliament House and that Mr Lehrmann had said that he not been drinking that evening.
- 4.6 The Claimant broke down. Ms Brown informed her that Mr Lehrmann had been dismissed and would not be returning. Ms Brown instructed the Claimant to take

- the rest of the day off and gave her a brochure for the Employee Assistance Program.
- 4.7 Ms Brown did not ask the Claimant if she needed (nor did she offer to provide) any further medical assistance or trauma counselling.
- 4.8 Ms Brown did not ask the Claimant if she wanted to report the sexual assault to the Police. Ms Brown did not advise the Claimant that she would be initiating an investigation and did not ask the Claimant if she needed (nor did she offer to provide) legal advice about the events.
- 4.9 During the week following the sexual assault, Mr Yaron Finklestein, Principal Secretary to the Prime Minister, was a regular presence in Senator Reynolds' office advising Ms Brown on how to deal with the Claimant in light of the sexual assault by Mr Lehrmann. However, Mr Finklestein did not seek the Claimant's views about what remedies or outcomes she wanted.
- 4.10 Later that week Ms Brown asked the Claimant if she had contacted the Employee Assistance Program. The Claimant advised that she had called the number and been informed that there was a two-month wait period to speak to a psychologist.
- 4.11 Ms Brown did not offer to or arrange for any alternative counselling service to be provided to the Claimant.
- 4.12 The Claimant asked Ms Brown several times if she could view the CCTV footage from 22/23 March 2019 but Ms Brown rebuffed her requests. The Claimant was not granted access to the CCTV footage at that time.
- 4.13 On 27 March 2019 the Claimant met with members of the Australian Federal Police (AFP) Parliament House Unit. They informed her that they had been told to investigate a sexual assault. The Claimant told the AFP about the events of the 22/23 March 2019 including that Mr Lehrmann had sexually assaulted her.
- 4.14 On 1 April 2019, Senator Reynolds was at Parliament House and met with the Claimant together with Ms Brown. The meeting took place inside Senator Reynolds' office, with the Claimant having to sit near the couch on which she had been sexually assaulted.
- 4.15 Senator Reynolds apologised to the Claimant for what had happened to her and said that she was "*shocked and appalled by what had taken place*" and it made her feel "*physically ill*".

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- 4.16 Senator Reynolds told the Claimant that she was free to pursue the matter with the AFP. However, Senator Reynolds did not ask the Claimant if she needed (nor did she offer to source or pay for) legal assistance or advice about dealing with the AFP in their investigation or about seeking redress.
- 4.17 Senator Reynolds did not arrange for any medical, trauma counselling or other assistance to be provided to the Claimant.
- 4.18 The meeting of 1 April 2019 was the first and last occasion on which Senator Reynolds directly spoke to the Claimant about the sexual assault.
- 4.19 Approximately two weeks after the sexual assault, the AFP Parliament House Unit elevated the investigation of the sexual assault to the Belconnen AFP Sexual Assault Crimes Unit. Officers arranged for the Claimant to see a counsellor from the Canberra Rape Crisis Centre, which was the first time the Claimant saw a trained counsellor about the sexual assault.
- 4.20 The Belconnen AFP Sexual Assault Crimes Unit informed the Claimant that they were having difficulty retrieving the CCTV footage from the relevant channels in Parliament House.
- 4.21 On 11 April 2019 a Federal election was called.
- 4.22 At or about that time, the Claimant raised with Ms Brown the issue of sick leave for her mental health and also needing time off work to assist the AFP in its investigation. Ms Brown demonstrated an unwillingness to discuss the issue and made it clear to the Claimant that it was her problem to deal with.
- 4.23 Ms Brown informed the Claimant that she had two options. She could return home to the Gold Coast on paid leave for the duration of the election campaign, but this would negatively impact her prospects of having a job to reapply for after the election. Alternatively, the Claimant could "stay on board" Senator Reynolds' team and work on the election campaign in Western Australia.
- 4.24 Ms Brown made it clear by her words and demeanour that the events of 22/23 March 2019 must be put to one side and that the Claimant needed to remain silent about the sexual assault, in order to keep her job/career.
- 4.25 The Claimant was fearful of losing her career and elected to go to Western Australia to assist with Senator Reynolds' election campaign. In that context the Claimant felt she had no choice but to abandon pursuit of the complaint of sexual assault with the AFP.

- 4.26 On 13 April 2019, the Claimant informed the Belconnen AFP Sexual Assault Crimes Unit that she no longer wished to pursue the complaint of sexual assault in light of her work demands.
- 4.27 The Claimant went to Western Australia to work on Senator Reynolds' election campaign. However, she was directed to work mostly on her own in a hotel room, 7 days a week for 6 weeks. Her mental health deteriorated.
- 4.28 Senator Reynolds did not engage with the Claimant at all during the election campaign. She avoided the Claimant and made clear that she did not want the Claimant attending events with her. Senator Reynolds did not enquire how the Claimant was, or if the Claimant was receiving counselling or any other support.

5. HANDLING OF SEXUAL ASSAULT BY SENATOR CASH'S OFFICE

- 5.1 After the May 2019 election, it was tolerably clear that Senator Reynolds was not interested in having the Claimant as a member of her staff any longer.
- 5.2 The Claimant applied for roles with other Ministers.
- 5.3 On about 6 June 2019, the Claimant was employed by Senator Michaelia Cash, on behalf of the Commonwealth, under the MOPS Act, as Executive Assistant/ Office Manager (a classification within the Commonwealth Members of Parliament Staff Enterprise Agreement).
- 5.4 On 18 October 2019, a journalist lodged an inquiry with Senator Reynolds' office and with the AFP, about a sexual assault alleged to have occurred in Senator Reynolds' office.
- 5.5 Senator Reynolds informed Senator Cash's Chief of Staff, Mr Daniel Try, also employed by Senator Cash, on behalf of the Commonwealth, under the MOPS Act, about the sexual assault of the Claimant by Mr Lehrmann on 23 March 2019. Mr Try approached the Claimant about talking to Senator Cash about the sexual assault and he asked the Claimant if she wanted to talk to Senator Cash or whether he should do so on her behalf. The Claimant indicated to Mr Try she preferred for him to talk to Senator Cash about the incident. He did not need any further information from the Claimant to do this.
- 5.6 On 19 October 2019, Mr Try informed the Claimant that Senator Cash's office would try to quash the media story.

- 5.7 Thereafter, members of Senator Cash's office including Regina Camera, also employed by Senator Cash, on behalf of the Commonwealth, under the MOPS Act, impressed on the Claimant the importance of the Claimant not talking to anyone about the sexual assault, especially the media. Members of Senator Cash's office, including Senator Cash herself on 10 November 2020, began 'checking in' on the Claimant but only out of concern that she might speak to the press.
- 5.8 While the Claimant remained silent about the sexual assault, it became apparent that knowledge of the incident had spread well beyond Senator Reynolds, Ms Brown, Senator Cash and Mr Try without the Claimant's knowledge or consent. This was because various staff in Parliament House broached the topic with the Claimant from time to time, indicating to her that they were aware of the details of the sexual assault. This was extremely humiliating and distressing for the Claimant.
- 5.9 The Claimant experienced ongoing difficulty, including panic, when entering her workplace through the Ministerial entrance at Parliament House, where Mr Lehrmann and she had entered on the night she was sexually assaulted.
- 5.10 The Claimant informed Senator Cash about her ongoing difficulty in entering the workplace through the Ministerial entrance. Senator Cash indicated to the Claimant that, in effect, she had to 'suck it up'.
- 5.11 Senator Cash did not enquire if the Claimant was receiving medical, counselling or other psychological support to assist her in overcoming the trauma, nor did Senator Cash offer to arrange any such assistance for the Claimant.
- 5.12 The Claimant's mental health continued to worsen.
- 5.13 On 5 February 2021 the Claimant resigned from her employment in Senator Cash's office, because of the ongoing effects of the trauma from the sexual assault, the manner in which she had been treated and ostracised by Senator Reynolds, the manner in which she had been treated by Senator Cash, the embarrassment and humiliation that she felt when confronted by other staff members about the sexual assault, the flashbacks and anxiety she experienced when entering the building through the Ministerial entrance and the distress of being forced to remain silent about the events. The Claimant was told to 'take a week' and the resignation was not ultimately processed until 12 February 2021.

- 5.14 On 15 February 2021, Senator Reynolds described the Claimant as a “lying cow” to parliamentary staff members.
- 5.15 On 24 February 2022, the Claimant formally renewed her complaint of sexual assault with the AFP. Mr Lehrmann was charged with sexual assault.

6. CRIMINAL TRIAL

- 6.1 The criminal trial against Mr Lehrmann for the sexual assault of the Claimant was originally due to commence on 6 June 2022 in the ACT Supreme Court. It did not ultimately commence until 4 October 2022.
- 6.2 The Claimant was cross-examined at length and an adjournment of her evidence for a number of days was granted on the grounds that she was psychologically unable to continue.
- 6.3 Senator Reynolds was called to give evidence in the trial and on 17 October 2022, admitted the following conduct in the course of her evidence:
- 6.3.1 that Senator Reynolds personally sent a text message directly to the counsel acting for Mr Lehrmann about text messages between the claimant and Nicky Haymer, Senator Reynold’s former media advisor being *“If you have messages between Brittany and Niki, they may be revealing.”*;
- 6.3.2 that Senator Reynolds personally made a request directly to the legal team acting for Mr Lehrmann that she be provided with transcripts of the cross-examination of the Claimant;
- 6.3.3 that Senator Reynolds’ husband was present in court during the oral evidence and cross-examination of the Claimant.
- (Courtroom Conduct)**
- 6.4 On 27 October 2022, the criminal trial was aborted by reason of wrongful conduct by a juror and the jury was discharged. The matter was listed for a new trial to commence on 20 February 2022.
- 6.5 On 2 December 2022, the ACT Director of Public Prosecutions announced that the charges against Mr Lehrmann had been withdrawn because a retrial would pose an “unacceptable risk” to the Claimant’s health.

7. LEAKING CONFIDENTIAL INFORMATION AND MEDIA COMMENTS

7.1 On or about 16 March 2022, the lawyers for the Claimant sent the following documents to Senator Reynolds, on the basis that the documents were provided on an "without prejudice basis" and were strictly confidential:

7.1.1 draft Particulars of Liability dated March 2022; and

7.1.2 draft Particulars of Damages,
(Confidential Documents).

7.2 In or about August 2022, the Claimant and the Respondents agreed to participate in a Mediation on 13 December 2022.

7.3 On 3 and 4 December 2022, articles appeared in The Australian, The Canberra Times and The Sydney Morning Herald which variously disclosed:

7.3.1 the fact that the Claimant intended to make a monetary claim against the Respondents;

7.3.2 information from the Confidential Documents;

7.3.3 that a Mediation had been set down for 13 December 2022; and

7.3.4 the name of the Claimant's solicitor,
(Without Prejudice Information)

7.4 On 5 and 6 December 2022, further media articles were published commenting on, amongst other things, the fact that the Claimant was pursuing a monetary claim.

7.5 Senator Reynolds, or members of her staff acting on her instruction, disclosed the Without Prejudice Information to one or more of the journalists who authored the media articles referred to in paragraphs 7.3 and 7.4 above and did so in order to expose the Claimant's monetary claim.

8. UNLAWFUL CONDUCT

8.1 The Claimant identifies the following breaches but reserves her rights to rely on other breaches arising out of the factual matrix set out above.

9. LIABILITY FOR SEXUAL HARASSMENT

9.1 The sexual assault of the Claimant by Mr Lehrman set out in Part 2 above constituted sexual harassment and/or harassment on the ground of sex within the meaning of s 28A and s 28AA respectively of the *Sex Discrimination Act 1984* (Cth) (**SDA**) insofar as it was:

9.1.1 an unwelcome sexual advance to the Claimant; and/or

9.1.2 unwelcome conduct of a sexual nature in relation to the Claimant;

9.1.3 unwelcome conduct of a seriously demeaning nature in relation to the Claimant by reason of her sex;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the Claimant would be offended, humiliated or intimidated.

9.2 By reason of the matters set out in Parts 1 and 2 above:

9.2.1 Mr Lehrman and the Claimant were 'fellow employees' and/or 'workplace participants'; and

9.2.2 Parliament House was a 'workplace', being a place where Mr Lehrmann and the Claimant worked or otherwise carried on functions in connection with being workplace participants, within the meaning of s 28B(7) of the SDA.

9.3 By reason of the matters set out in paragraphs 9.1 and 9.2 above, Mr Lehrman engaged in unlawful sexual harassment of the Claimant in contravention of s 28B(2) and/or s 28B(6) of the SDA.

9.4 By reason of s 106(1)(b) of the SDA, the Commonwealth is vicariously liable for the unlawful sexual harassment of the Claimant by Mr Lehrmann.

10. LIABILITY FOR SEX DISCRIMINATION

10.1 The Commonwealth's vicarious liability for the sexual harassment of the Claimant by Mr Lehrmann as set out in paragraph 9.4 above constituted direct discrimination within the meaning of s 5(1) of the SDA in that by reason of the Claimant being a woman, she was treated less favourably than a man would have been treated in circumstances that are the same or are not materially different.

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- 10.2 For these purposes, the circumstances that are the same or are not materially different include:
- 10.2.1 being a junior work colleague; and
 - 10.2.2 being heavily and patently intoxicated.
- 10.3 This amounted to a contravention of s 14(2)(d) of the SDA by subjecting the Claimant to a detriment, namely sexual assault and sexual harassment.
- 10.4 Further by reason of the matters set out in Part 1 and 3 above, the persons engaged by the Commonwealth as security guards or cleaners engaged in unlawful direct discrimination within the meaning of s 5(1) of the SDA in that by reason of the Claimant being a woman, she was treated less favourably than a man would have been treated in circumstances that are the same or are not materially different.
- 10.5 Further, by reason of the matters set out in Parts 1, 2, 4 and 5 above, the Commonwealth, Senator Reynolds and Senator Cash engaged in unlawful direct discrimination within the meaning of s 5(1) of the SDA in that by reason of the Claimant being a woman, she was treated less favourably than a man would have been treated in circumstances that are the same or are not materially different.
- 10.6 This amounted to a contravention of s 14(2)(a), (b) and/or (d) of the SDA in that it constituted discrimination
- (i) in the terms or conditions of employment afforded to the Claimant;
 - (ii) by denying the Claimant access, or limiting the Claimant's access, to opportunities for promotion, transfer or training, or to other benefits associated with her employment;
 - (iii) by subjecting the Claimant to any other detriment,
- namely by:
- 10.6.1 failing to conduct a detailed investigation into the sexual assault;
 - 10.6.2 failing to ask the Claimant if she needed (or offering to source) legal assistance or advice about dealing with the AFP in their investigation or about seeking redress;
 - 10.6.3 failing to arrange for any medical, trauma counselling or other assistance for the Claimant;

- 10.6.4 giving her the ultimatum in paragraphs 4.23 and 4.24 above;
 - 10.6.5 being dismissive of and requiring the Claimant to work despite her deteriorating mental health;
 - 10.6.6 isolating the Claimant as set out in paragraph 4.27 above;
 - 10.6.7 ostracising the Claimant as set out in paragraph 4.28 above;
 - 10.6.8 requiring that the Claimant transfer to the staff of Senator Cash;
 - 10.6.9 requiring the Claimant to suppress interaction with the media and stay silent about the sexual assault as set out in paragraph 5.7 above;
 - 10.6.10 failing to keep the sexual assault confidential and thereby subjecting the Claimant to gossip;
 - 10.6.11 requiring the Claimant to enter her workplace through the Ministerial entrance at Parliament House despite this inducing flashbacks.
- 10.7 Further, or in the alternative, this conduct amounted to a contravention of s 14(2)(c) of the SDA in that, in the circumstances set out above, the Claimant's continuing employment was untenable and her resignation was a constructive dismissal.

11. LIABILITY FOR DISABILITY DISCRIMINATION

- 11.1 As at 22 and 23 March 2019, the Claimant suffered from a disability within the meaning of s. 4 of the *Disability Discrimination Act, 1992 (DDA)*, being high level intoxication, a disorder that affected the Claimant's thought processes, judgment and/or her ability to defend herself.
- 11.2 By reason of the matters set out in Parts 1 and 3 above, the Commonwealth (who engaged the security guards) engaged in unlawful direct discrimination within the meaning of s 5(1) and/or (2) of the DDA in that they:
- 11.2.1 treated the Claimant less favourably than a person without that disability would have been treated in circumstances that are the same or are not materially different; and/or
 - 11.2.2 failed to make reasonable adjustments which had the effect that the Claimant, because of her disability, was treated less favourably than

a person without that disability would have been treated in circumstances that are not materially different.

11.3 At all material times after the sexual assault, the Claimant suffered from a disability being the psychological effects associated with the sexual assault, anxiety, depression and/or PTSD.

11.4 By reason of the matters set out in Parts 1, 4 and 5 above, the Commonwealth, Senator Reynolds and Senator Cash engaged in unlawful indirect discrimination within the meaning of s 6(2) of the DDA in that:

11.4.1 the conditions or requirements placed on the Claimant included continuing to work after the sexual assault as normal;

11.4.2 because of the Claimant's disability, she would have been able to comply with those conditions or requirements if reasonable adjustments had been made but the Respondents did not make those reasonable adjustments, being:

11.4.2.1 conducting a detailed investigation into the sexual assault;

11.4.2.2 asking the Claimant if she needed (and/or offering to source) legal assistance or advice about dealing with the AFP in their investigation or about seeking redress;

11.4.2.3 arranging for any medical, trauma counselling or other assistance for the Claimant;

11.4.2.4 not giving the Claimant the ultimatum in paragraphs 4.23 and 4.24 above and instead granting her request to take sick leave to deal with her deteriorating mental health;

11.4.2.5 being compassionate and flexible in the face of the Claimant's deteriorating mental health;

11.4.2.6 ensuring that the Claimant was not isolated as set out in paragraph 4.27 above and instead provided with collegiality and support;

11.4.2.7 ensuring that the Claimant was not ostracised as set out in paragraph 4.28 above and instead was fully part of the election campaign;

11.4.2.8 not directing or requiring the Claimant to suppress interaction with the media and stay silent about the sexual assault as set out in paragraph 5.7 above;

11.4.2.9 ensuring that all aspects of the sexual assault was kept confidential;

11.4.2.10 not requiring the Claimant to enter her workplace through the Ministerial entrance at Parliament House because it induced flashbacks; and

the failure to make the reasonable adjustments had or was likely to have the effect of disadvantaging requirement persons with the Claimant's disability.

11.5 This conduct amounted to a contravention of s 15(2)(a), (b) and/or (d) of the DDA in that it constituted discrimination:

11.5.1 in the terms or conditions of employment afforded to the Claimant;

11.5.2 by denying the Claimant access, or limiting the Claimant's access, to opportunities for promotion, transfer or training, or to other benefits associated with her employment;

11.5.3 by subjecting the Claimant to any other detriment.

11.6 Further, or in the alternative, this conduct amounted to a contravention of s 15(2)(c) of the DDA in that, in the circumstances set out above, the Claimant's continuing employment was untenable and her resignation was a constructive dismissal.

12. LIABILITY FOR VICTIMISATION

12.1 By reason of the matters set out in paragraphs 4.4, 4.13, 5.5 and Parts 6 and 7 above, the Claimant made an allegation that a person, Mr Lehrmann, had done an act that is unlawful by reason of a provision of Part II of the SDA.

12.2 On the grounds set out in paragraph 12.1 above, Senator Reynolds and/or members of Senator Reynolds' staff (including Ms Brown) committed acts of unlawful victimisation against the Claimant within the meaning of s 47A of the SDA by subjecting, or threatening to subject, the Claimant to detriments, namely:

- 12.2.1 failing to initiate any, or any proper, investigation into the sexual assault of the Claimant by Mr Lehrmann;
- 12.2.2 failing to offer and/or arrange any medical, trauma or rape counselling or psychological assistance in respect of the sexual assault;
- 12.2.3 failing to offer and/or arrange assistance for the Claimant in relation to the sexual assault including but not limited to legal assistance for the police investigation and advice as to remedies;
- 12.2.4 failing to support or facilitate the applicant pursuing a complaint of sexual assault with the AFP;
- 12.2.5 refusing to provide the Claimant with access to the CCTV footage of Parliament House from 23 March 2019;
- 12.2.6 requiring the Claimant to attend a meeting in the same location in which the Claimant had been sexually assaulted;
- 12.2.7 pressuring the Claimant to remain silent about the sexual assault in order to keep her job, on the basis that pursuing the matter would attract unwanted adverse attention to Senator Reynolds, Senator Cash and by association, the Liberal Parliamentarians;
- 12.2.8 pressuring the Claimant by suggesting that her job opportunities would be impaired if she took paid leave during the election campaign when she advised that she needed to manage the effects of the sexual assault;
- 12.2.9 sending the Claimant to Western Australia to work on the election campaign in isolation and without support around her;
- 12.2.10 ostracising the Claimant during the election campaign by avoiding her and making clear that the Claimant was not wanted at campaign events;
- 12.2.11 disclosing details of the sexual assault to other staff in Parliament House without the Claimant's consent;
- 12.2.12 engaging in the Courtroom Conduct;
- 12.2.13 disclosing the Without Prejudice Information to the media thereby bringing further adverse attention to the Claimant and/or humiliating

her and/or ensuring that she was further pursued by the press in relation to her compensation claim..

12.3 On the ground set out in paragraph 12.1 above, Senator Cash and members of Senator Cash's staff (including Mr Try and Ms Camera) committed acts of unlawful victimisation against the Claimant within the meaning of s 47A of the SDA by subjecting, or threatening to subject, the Claimant to a detriment, namely:

12.3.1 failing to offer and/or arrange any medical, trauma or rape counselling or psychological assistance in respect of the sexual assault;

12.3.2 failing to offer and/or arrange assistance for the Claimant in relation to the sexual assault including but not limited to legal assistance for the police investigation and advice as to remedies;

12.3.3 failing to support or facilitate the applicant pursuing a complaint of sexual assault with the AFP;

12.3.4 pressuring the Claimant to remain silent about the sexual assault in order to keep her job;

12.3.5 subjecting the Claimant to repeated 'check ins' to confirm that she had not spoken to the media;

12.3.6 disclosing details of the sexual assault to other staff in Parliament House without the Claimant's consent;

12.3.7 requiring the Claimant to continue entering the workplace through the Ministerial entrance despite her ongoing difficulty, including panic, in doing so and failing to arrange any medical, counselling or other support to assist with overcoming the anxiety.

12.4 In addition, the Commonwealth is vicariously liable at common law for the acts of victimisation set out above in that:

12.4.1 each of Senators Reynolds and Cash were agents of the Commonwealth and had ostensible authority to engage in the acts outlined in those paragraphs;

12.4.2 the members of staff of each of Senators Reynolds and Cash (including Ms Brown, Mr Try, and Ms Camera) were employees of

the Commonwealth and engaged in the acts outlined in those paragraphs in the course of their employment.

13. LOSS AND DAMAGE SUFFERED BECAUSE OF THE UNLAWFUL DISCRIMINATORY CONDUCT OF THE RESPONDENTS

- 13.1 Sexual assault and associated physical injuries;
- 13.2 Being the subject of adverse media commentary;
- 13.3 Being the subject of adverse on-line commentary including on the Liberal Party Facebook page and other online 'trolling';

